



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

FOURTH DIVISION

MINUTES of the proceedings held on 9 March 2018.

Present:

Hon. ALEX L. QUIROZ	-----	Chairperson
Hon. REYNALDO P. CRUZ	-----	Associate Justice
Hon. BAYANI H. JACINTO	-----	Associate Justice

The following resolution was adopted:

Criminal Case No. SB-13-CRM-0597 - People v. Herminio T. Disini, et al.

This resolves accused Jesus P. Disini's (hereinafter, "Disini") *Omnibus Motion (For the issuance of a Permanent Injunction, the quashing of the information and the warrant of arrest, and the lifting of hold departure order)*¹ dated 28 December 2017 and the prosecution's *Comment/Opposition (Re: Accused Jesus [P]. Disini's Omnibus Motion dated December 28, 2017)* dated 25 January 2018.²

Disini argues that the immunity granted to him by the Philippine Government under the Immunity Agreement that the Supreme Court in *Disini v. Sandiganbayan*³ held to be valid and binding to both parties should also apply to the present criminal case. He contends that he is being charged in the Information with conspiring with the other accused to induce former President Ferdinand E. Marcos "to acquire financial interest in two domestic private corporations that are controlled by Herdis Management & Investment Corporation," which runs counter to the terms of the Immunity Agreement that provide that he cannot be prosecuted for "any conduct directly or indirectly relating to or arising out of x x x [his] former employment by Herminio P. Disini or any company in which Herminio T. Disini owned any interest prior to July 1, 1984[.]"

Citing the case of *Tanchanco v. Sandiganbayan*⁴, Disini posits that the Court lacks jurisdiction to try him due to the Immunity

¹ Records, pp. 443-456.

² *Id.*, pp. 487-489.

³ 621 SCRA 415 (2010).

⁴ 476 SCRA 202 (2005).

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Agreement, the validity and enforceability of which has already been affirmed by the Supreme Court *en banc*.


Disini prays that the Court: (1) issue a permanent injunction against the Republic of the Philippines and all its agencies from proceeding with the case; (2) quash the Information dated 5 February 2013; (3) quash the Warrant of Arrest dated 1 December 2017; (4) lift the hold departure order dated 17 November 2017; and (5) suspend the present proceedings against him pending the resolution of his *Omnibus Motion*.

In its *Comment/Opposition*, the prosecution counters that *Disini v. Sandiganbayan* does not apply to the present case considering that the issues in the former case involve the authority of the Presidential Commission on Good Government (PCGG) to revoke and nullify the Immunity Agreement between the Republic and Disini and the Court's alleged grave abuse of discretion when it denied Disini's motion to quash subpoena addressed to him, while the present case involves the inducement or the causing of former President Ferdinand E. Marcos to acquire financial interest in two domestic private corporations that were controlled by Herdis Management & Investment Corporation.

The prosecution also claims that the present case was instituted and the Information filed by the Office of the Ombudsman under the strength of the Decision of the Supreme Court in the case of *Republic v. Desierto*⁵ where the Supreme Court remanded OMB Case No. 093-1374, the same one involved in this case, for filing of the proper Information.

The motion is meritorious.

The relevant portions of paragraph 2 of the Immunity Agreement entered into between the Republic of the Philippines are quoted as follows:

 2. The Republic of the Philippines agrees that it shall not institute, prosecute or maintain any criminal x x x proceeding x x x against Jesus P. Disini, for or in connection with x x x any conduct directly or indirectly relating to or arising out of x x x Jesus P. Disini's former employment by Herminio P. Disini or any company in which Herminio T. Disini owned any interest prior to July 1, 1984; x x x; and it further agrees that it shall not use, directly or indirectly, against Jesus P. Disini, any

⁵ 512 SCRA 57 (2007).

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information, lead or document obtained from him pursuant to this agreement; (Emphasis supplied)

The question that must be resolved by the Court is: Do the terms of the Immunity Agreement prohibiting the Republic from filing any criminal case against Disini involving any conduct directly or indirectly relating to or arising out of his former employment by Herminio P. Disini or any company in which Herminio T. Disini owned any interest prior to July 1, 1984 cover the act with which Disini is charged in the Information?

The Court replies in the affirmative.

The accusatory allegations of the Information read as follows.

That on or about March 11, 1982 or sometime prior or subsequent thereto, in Makati City, Philippines, and within the jurisdiction of this Honorable Court, accused Herminio T. Disini, then Senior Vice President and General Counsel; and Jesus T. Disini, Angelo V. Manahan, Dominico O. Borja, Jerry Orlina and Alfredo M. Velayo, Officers of Herdis Management & Investment Corporation (formerly Herdis Group, Inc.), a local corporation, conspiring and confederating together, did then and there willfully, unlawfully and criminally induce or cause former President Ferdinand E. Marcos to acquire financial interest in two domestic private corporations that are controlled by Herdis Management & Investment Corporation: 1) The Energy Corporation (TEC), for 4 billion of its shares of stocks at par value of Php0.01 each or a total value of Php40 million; and 2) Vulcan Industrial and Mining Corporation (VIMC), for 2.5 billion of its shares of stocks at par value of Php0.01 each or a total value of Php25 million, of which the former President was prohibited by law from having interest, to the damage and prejudice of the government and the public interest.

CONTRARY TO LAW.

It is at once apparent that the act of inducing or causing former President Ferdinand Edralin Marcos to acquire financial interest in two (2) local corporations that are controlled by Herdis Management & Investment Corporation (formerly Herdis Group, Inc.) of which the former President was prohibited by law from having interest, as stated in the Information, amounts to a conduct that is directly or indirectly related to or arose out of Disini's former employment by Herminio P. Disini or any company in which Herminio T. Disini owned any interest prior to July 1, 1984. This being the case, the present criminal case is dismissible insofar as Disini is concerned due to his immunity as provided in the Immunity Agreement.

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The Court also takes judicial notice⁶ of the findings of the First Division of the Court in its *Decision in Republic of the Philippines v. Herminio T. Disini, et al.*, docketed as Civil Case No. 0013 promulgated on 11 April 2012, as regards Disini's employment with the companies owned by Herminio T. Disini. In said Decision, the First Division made the following findings as regards Disini:

x x x **Atty. Jesus P. Disini**, a lawyer and a second cousin of defendant Herminio Disini, was an **executive in said defendant's group of companies** from 1971 through 1984. He was a **Senior Vice President of Herdis Group, Inc.** when he resigned in July 1984. At various times, he was a **member of the board of directors** of several known Disini-owned companies which included Power Contractors, Inc., Asia Industries, Inc., Koppel Philippines, Inc., USIPHIL, Inc., Ferrochrome Phils., Inc., Summa Kumagai, Inc., Cellulose Processing Corporation and HMC Marketing Corp., among others. x x x (emphasis supplied)

As a corporate officer of Herdis Management & Investment Corporation (formerly Herdis Group, Inc.), Disini is clearly under the employ of Herminio Disini or any company in which the latter owned any interest. The Information also alleges that Disini and the other accused were officers of the same corporation owned by Herminio Disini.

However, it cannot be gainsaid that the dismissal of the case is only against Disini, considering that the present case falls under the terms of the Immunity Agreement of which only he is immune from the charge. Thus, Disini cannot seek the dismissal of the whole criminal case to favor even the other accused. Jurisprudence states that criminal immunity cannot be granted to a person whom the State never intended to exempt from prosecution, or who performed no act to the benefit of the State that may have served as basis for a possible grant of exemption.⁷

⁶ "A court will take judicial notice of its own acts and records in the same case, of facts established in prior proceedings in the same case, of the authenticity of its own records, of another case between the same parties, of the files of related cases in the same court, and of public records on file in the same court. In addition **judicial notice will be taken of the record, pleadings or judgment of a case in another court between the same parties or involving one of the same parties**, as well as of the record of another case between different parties in the same court." (*Degayo v. Magbanua-Dinglasan*, 755 SCRA 1, 19 [2015], citing *Republic v. CA*, 277 SCRA 633 [1997]. Emphasis supplied.)

⁷ *Supra*, note 4, at 235.

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WHEREFORE, premises considered, the Court partially **GRANTS** accused Jesus P. Disini's *Omnibus Motion* and **DISMISSES** the present case only as against him. Accordingly, the Court **LIFTS** and **SETS ASIDE** the Warrant of Arrest and the Hold Departure Order insofar as Jesus P. Disini is concerned. The Court orders the **RELEASE** of his bail bond, subject to the usual accounting and auditing rules and procedures.

SO ORDERED.

APPROVED:

QUIROZ, J., Chairperson

CRUZ, J.

JACINTO, J.

